

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of L. J. PETERSON, Minor.

UNPUBLISHED

January 21, 2014

No. 316676

Eaton Circuit Court

Family Division

LC No. 12-018419-NA

Before: OWENS, P.J., and BORRELLO and GLEICHER, JJ.

PER CURIAM.

The circuit court terminated respondent-mother's parental rights to her young son, LP.¹ The termination was based on respondent's past failure to protect the child from physical abuse and the future danger she posed to him given her inability to accept any responsibility for the child's injury. As petitioner established at least one statutory ground for termination and the court did not clearly err in finding termination to be in the child's best interests, we affirm.

I. BACKGROUND

On September 28, 2012, respondent sought emergency medical treatment for LP when she discovered a soft spot on his head. The doctor diagnosed LP with a skull fracture and opined that it was caused by a fall from about four feet. LP was only 11 months old at the time. It is still unknown if LP will suffer lasting effects as a result of this injury. It appears from the record that Child Protective Services (CPS) immediately removed LP from respondent's home and placed him with his maternal grandmother, SC.

Respondent initially believed that her father's girlfriend caused the injury. Her father, who had a history of domestic violence, his girlfriend and the girlfriend's two children were living with respondent, her husband and LP in a two-bedroom apartment at that time. Respondent physically assaulted the girlfriend and the police were summoned. On October 4, 2012, respondent's husband "confessed" to her that "he had hurt [LP] on several occasions." He admitted to throwing the baby down in his crib, covering the baby's mouth and nose to quiet him, and squeezing his rib cage. LP's father has since been convicted of first-degree child abuse. SC testified that both she and her mother had told respondent in the past that the child's father

¹ LP's biological father, respondent's husband, released his parental rights.

was too rough with the child and used inappropriate discipline, but respondent would not heed their warnings. At trial, respondent admitted that her husband had “smacked” her in the past, but she did not believe this gave her husband a “history of domestic violence” because it was a single isolated incident.

In December 2012, respondent filed for divorce from her husband. She was by that time pregnant with their second child. Despite her protestations at the termination hearing that she had severed ties with her husband, witnesses testified that respondent had continued her relationship with him. Respondent was in counseling and taking parenting and domestic violence prevention classes. She had also moved into a domestic violence shelter. She did not seem to benefit from these services, however. Respondent told a friend that she still loved her husband and would leave the state with him and LP when she regained custody. Respondent allowed her father, her husband, and an unknown third male to pick her up near the domestic violence shelter, contrary to the shelter’s rules. Other residents reported that respondent engaged in sexual relations with unknown males in her van behind the shelter and spoke inappropriately around the children living there. SC and the foster care caseworker both reported that respondent gave insufficient attention to LP during supervised parenting time sessions, used foul language and called LP inappropriate names, and could not handle the child’s needs. Moreover, LP suffered from serious food allergies that also caused gastrointestinal issues. While respondent attended most of the child’s many doctor appointments, she did not seem to absorb the information learned.

Most concerning, despite many months of counseling, respondent never accepted responsibility for her failure to protect LP. Even in hindsight, respondent could not discern any sign that her husband posed a threat to their child. She claimed no responsibility for losing custody of her child because she was not the one who actually injured him. Respondent also blamed her mother, grandmother, friends, the shelter house monitor, and the caseworker for lying about her in order to fuel the termination case.

II. GROUNDS FOR TERMINATION

The circuit court terminated respondent’s parental rights under three factors within MCL 712A.19b(3):

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

* * *

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent’s home.

(iii) A nonparent adult’s act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse by the nonparent adult in the foreseeable future if placed in the parent’s home.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Petitioner concedes that the circuit court erred in relying on MCL 712A.19b(3)(b)(iii). LP's father was not transformed into a nonparent by operation of his voluntary release of parental rights. We discern no error, however, in the court's conclusion that grounds for termination were established under factors (b)(ii) and (j).

To terminate a parent's rights to her child, a court must find by clear and convincing evidence that at least one statutory ground exists. MCL 712A.19b(3). "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests," the court must order termination. MCL 712A.19b(5). We review for clear error a circuit court's finding of a statutory ground for termination, as well as its finding that termination is in a child's best interest. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A decision is "clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

In relation to both factor (b)(ii) and (j), respondent challenges the circuit court's conclusion that LP would be in danger of future harm if returned to her care. In this regard, the court found that respondent had adequate information to know that her child was in danger before her husband fractured LP's skull and yet did not "disassociate[e] herself with her husband or put[] safeguards in place." This past conduct led the court to believe that respondent would not protect her child in the future:

I have to explain that one because the testimony is that [respondent] separated herself from [LP's father]. However[,] there is also testimony that she's currently pregnant with his child and at least as I do the math it looks like she—they conceived that child after her other child's skull had been broken by the father. And, um, certainly that evidence does not convince this Court that [respondent] has accepted responsibility for the fact that her husband caused substantial harm to this child and that it would not happen to another child. And even though she has filed for divorce at this point[,] the evidence . . . shows she kept seeing [LP's father]. She met with [LP's] father and continued some kind of relationship with him at least until, you know, seven-eight months ago. That certainly shows that she did not understand the gravity of what [LP's father] has done.

The circuit court also noted respondent's refusal to accept responsibility for her failure to protect the child and irrational response that everyone else involved in the case "is lying." The court noted that "from a practical point of view, if you don't admit what you did was wrong there's no way a person can change because there's no reason to change." Accordingly, the court found that respondent could not benefit from services to remedy her failure to protect the child.

While the evidence does show that respondent filed for divorce from LP's father approximately six months before the termination hearing, the evidence also shows that respondent continued her relationship with LP's father after he admitted that he physically injured LP. It appears that the pair even conceived another child after the father's confession. This is not a case like *In re Sours*, 459 Mich 624, 635; 593 NW2d 520 (1999), in which the mother severed her ties with the abusive father for an 18-month period before the termination. The record before the circuit court revealed a mother who evidenced no concern for her child's safety from a man who had "smacked" her in the past, and ignored multiple warnings from family members about the father's treatment of the child.

The record evidence also established that respondent had not overcome her inability to recognize dangerous situations for her child. Despite weekly domestic violence prevention classes, respondent still would not acknowledge the severity and import of the incident in which LP's father struck her. Most importantly, even with the benefit of bimonthly visits with a counselor, respondent would not acknowledge her role in failing to protect her son. At the termination hearing eight months after LP had been removed from her care, respondent still believed she had done nothing wrong:

Q. And did you—do you have any responsibility? Do you see that you did anything wrong as far as [LP] coming into care?

A. No, I don't.

Q. You didn't do anything wrong?

A. No. I did not cause the injury. I did not know of the injury. So therefore I was not responsible.

As sagely noted by the circuit court, a person who feels they have made no mistakes has no reason to change to prevent mistakes in the future. While respondent may have received some benefit from the services provided during this child protective proceeding, she did not and cannot receive the most vital benefit toward reunification—the ability to protect her child in the future. See *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005), superseded in part on other grounds as noted in *In re Hansen*, 285 Mich App 158, 163-164; 774 NW2d 698 (2009) ("[I]t is not enough to merely go through the motions; a parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody."). Accordingly, we discern no error in the circuit court's conclusion that termination under MCL 712A.19b(3)(b)(ii) and (j) was supported by clear and convincing evidence.

III. BEST INTERESTS OF THE CHILD

Respondent also contends that termination of her parental rights was not in LP's best interests. "In deciding whether termination is in the child's best interests, the court may consider [1] the child's bond to the parent, [2] the parent's parenting ability, [3] the child's need for permanency, stability, and finality, and [4] the advantages of a foster home over the parent's home." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted).

Respondent complains that her parental rights cannot be terminated solely because she was a victim of domestic violence. The circuit court did not do so. Rather, the court found that it was in LP's best interests to terminate respondent's rights because of her parenting ability and LP's need for permanency, stability, and finality. The circuit court found that respondent had made a long list of poor life decisions that impacted her child, including allowing her father to move into her apartment despite knowledge of his violent history and continuing her relationship with LP's father after he assaulted her and then after he severely injured their son. Acknowledging the strong bond between respondent and LP, the court also noted respondent's minimal benefit from services during the proceedings. The court further reasoned that respondent had not made a realistic plan to provide for herself and the child, impacting LP's ability to secure permanency and stability with his mother.

The court also considered the advantages of LP's foster home over placement with respondent. LP is now living with his maternal grandmother, his teenaged aunt and uncle (respondent's younger siblings), and his maternal grandmother's parents. LP has a network of care providers in the home. The maternal grandmother testified that she wants to maintain a relationship with respondent and assist her in improving her life. Respondent and LP will therefore have some level of continuing relationship. Ultimately, given respondent's inability to acknowledge her role in failing to protect her child and gain the insight to protect her child in the future, retaining LP in his grandmother's home and terminating respondent's parental rights was in the child's best interests.

We affirm.

/s/ Donald S. Owens
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher